International Municipal Lawyers Association

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DIVERSIFYING THE PUBLIC-SAFETY SECTOR

Employment Law Section Meeting

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OVERVIEW

I. Introduction—Why diversification matters
   a. EEOC's strategic enforcement plan
   b. Two-fold benefits to diversified organizations

II. Thoughtful RECRUITING
   a. Checking your unconscious bias
   b. Conscious recruiting

III. Law and Issues related to HIRING
   a. What the numbers show
   b. Barriers to hiring
   c. Lessons learned from around the country



OVERVIEW (continued)

IV. Why focusing on RETENTION of a diverse workforce is important

   a. Climate survey
   b. Organizational policies and practices





According to the EEOC's Strategic Enforcement Plan for FY2017-21, one particular area of focus is "the lack of diversity in certain industries and workplaces such as … policing."

The EEOC's approach to combat this: *systemic litigation with a strategic impact*.

Two potential benefits to diversification in the public safety sector:

1. **Limit exposure for hiring practice complaints.**
2. **Minimize internal complaints of sexual harassment and external use of force complaints.**

TWO-FOLD BENEFITS OF DIVERSITY



Scholarly article published by Columbia Law School argues that a **<u>diverse police force reduces deadly use of force incidents</u>.**

Legewie, Joscha and Fagan, Jeffrey, Group Threat, Police Officer Diversity and the Deadly Use of Police Force (December 5, 2016). Columbia Public Law Research Paper No. 14-512. Available at : https://ssrn.com/abstract=2778692





- ✓RECRUITING
- ✓HIRING
- ✓RETENTION

RECRUITING

I. Checking your unconscious bias
II. Conscious recruiting

RECRUITING



Checking Your
“Unconscious Bias”

“UNCONSCIOUS BIAS” DEFINED

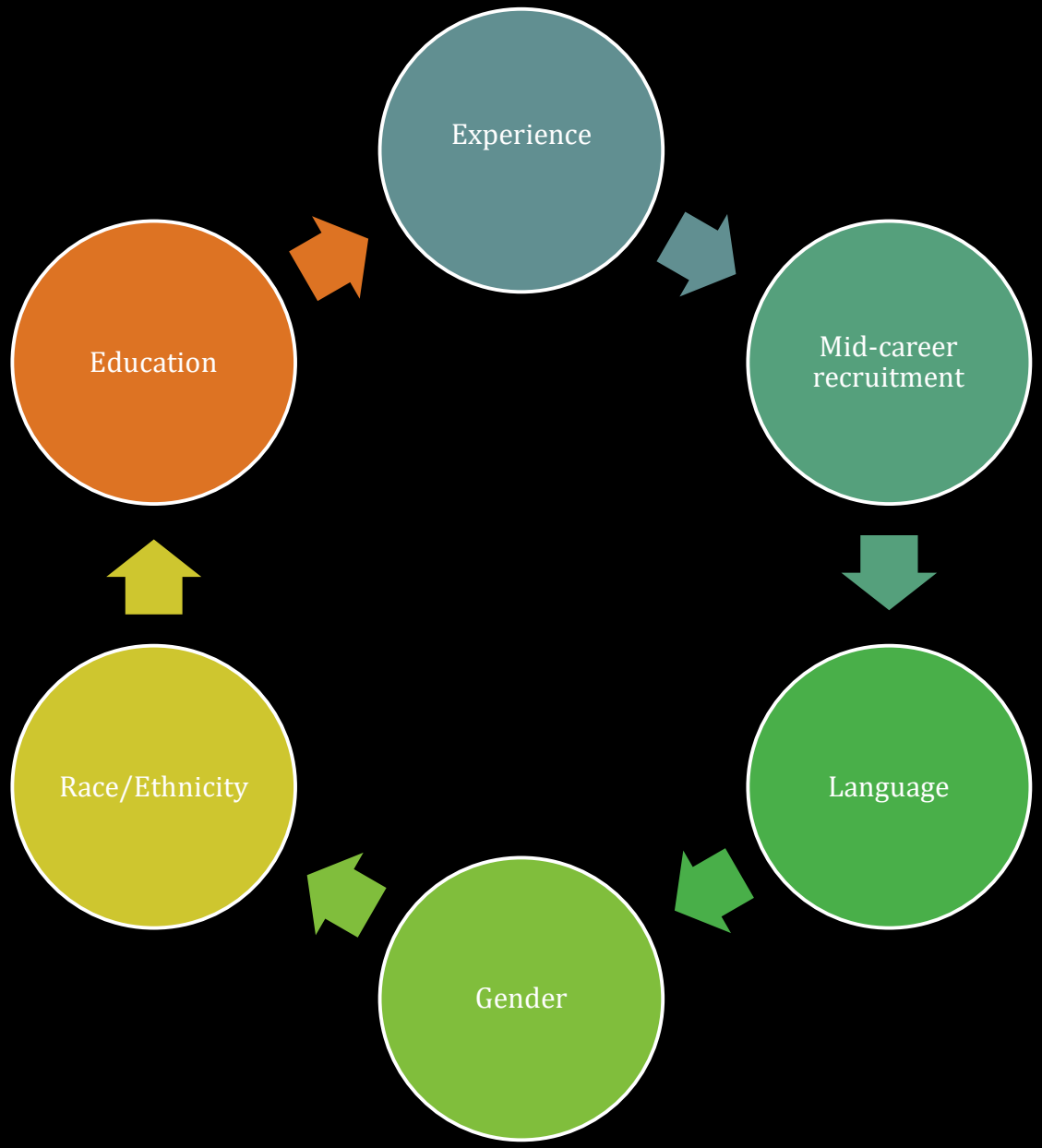
- **Unconscious bias** (or implicit bias) is often defined as prejudice or unsupported judgments in favor of or against one thing, person, or group as compared to another, in a way that is usually considered unfair.
  - occurs automatically as the brain makes quick judgments based on past experiences and background.
  - certain people benefit and other people are penalized.
  - tend to be exhibited toward minority groups based on factors such as class, gender, race, ethnicity, religious beliefs, age, able-bodiness, and other such traits.

Foundational definition of Vanderbilt University - https://www.vanderbilt.edu/equity-diversity-inclusion/unconscious-bias/

CONSCIOUS RECRUITING

- Who are your recruiters?
  - Firefighters and Police Officers
  - Civilian Human Resources Personnel
  - Members of the targeted community





CONSCIOUS RECRUITING (continued)

What are your organization's needs for the communities served?

*Recognize that this may change over time.

CONSCIOUS RECRUITING (continued)

- Where are your recruiters going?
  - Educational institutions (e.g. high schools, universities, community colleges)
  - Religious institutions
  - Community Centers
  - Military bases











CONSCIOUS RECRUITING (continued)

How often are your recruiters making contact with the targeted community?

- Community events
- Other non-recruiting events

THE HIRING PROCESS

I. What the numbers show

II. What happens in the hiring process that causes the final numbers to be what they are

III. What can be learned from organizations that have dealt with these issues

EEOC Program Evaluation: Recruitment & Hiring Gender Disparities in Public Safety Occupations in Federal Agencies

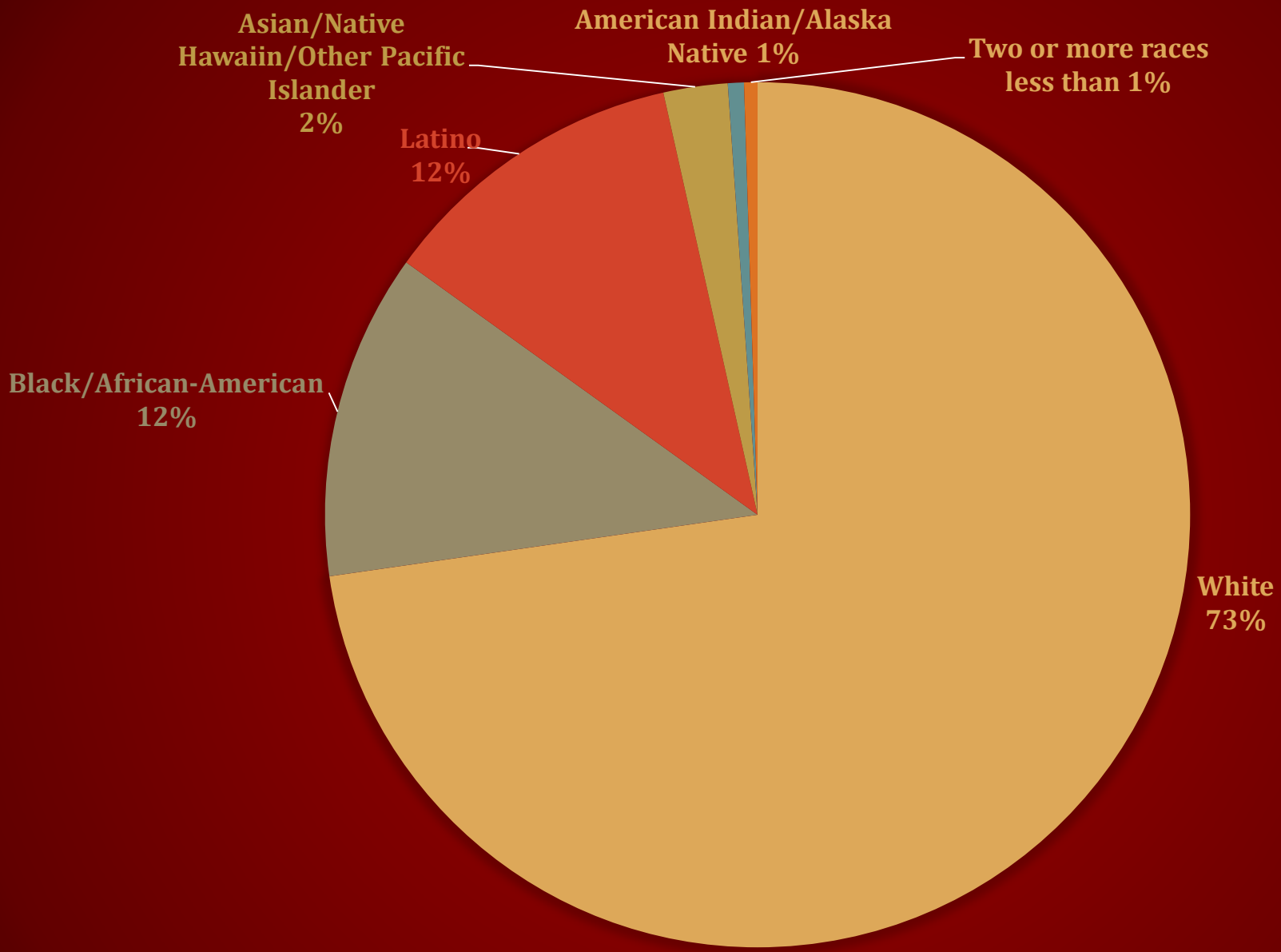
Occupation	Total # of Citizens in Occupation	Percentage by Sex	
	All	M	F
Correctional Officer	437,400	71.6%	28.4%
Firefighters	274,840	95.9%	4.1%
Police	659,585	85.2%	14.8%
Marshal/Criminal Investigations	130,800	76.3%	23.7%



CAREER FIREFIGHTER HISTORICAL DEMOGRAPHICS—DOL STUDY



Year	Women	Black	Hispanic Origin
1986	3,900 (1.9%)	16,000 (7.8%)	9,000 (4.4%)
1991	2,800 (1.4%)	17,800 (8.9%)	9,400 (4.7%)
1996	4,000 (1.8%)	30,000 (13.8%)	11,000 (5.1%)
2001	7,000 (2.8%)	32,000 (12.8%)	21,000 (8.4%)
2006	9,000 (3.6%)	25,000 (9.9%)	19,000 (7.5%)
2011	11,000 (3.6%)	19,500 (6.4%)	29,300 (9.6%)
2016	10,300 (4.1%)	19,900 (7.9%)	22,600 (9.0%)



LOCAL POLICE DEPARTMENT BREAKDOWN BY RACE—2013 DOJ REPORT

WHAT IS AFFECTING THE NUMBERS?

Women:
Physical fitness testing, e.g., CPAT

Racial Minorities:
Post-application background/screening process, e.g., "good moral character" requirements

The legal issue: Are these requirements creating a *disparate impact*?

LESSONS LEARNED ABOUT DISPARATE IMPACT CLAIMS

Ernst v. City of Chicago, 837 F.3d 788 (7th Cir. 2016).

"To prove a disparate-impact case, a plaintiff must show an adverse impact on employees with a protected characteristic like gender. Chicago concedes that its physical-skills entrance test has an adverse impact on women. The burden thus shifts to Chicago, which **must show that its physical-skills testing is job-related for the employee's position and consistent with business necessity**. . . .

When an employer relies on a validity study [] federal regulations establish technical standards for these studies."

→ Directed verdict for plaintiffs

WHAT DOES YOUR CLIENT'S PAT LOOK LIKE?





LESSONS LEARNED ABOUT DISPARATE IMPACT CLAIMS

Foster v. City of Pittsburgh, No. 2:12cv1207, 2015 U.S. Dist. LEXIS 180298 (W.D. Pa. Nov. 17, 2015).

"Plaintiffs alleged that the City's hiring process operated as a pattern or practice of systemic disparate treatment with respect to African-American applicants, and had an adverse impact on those applicants. **Plaintiffs further alleged that the City lacked any legitimate business justification for the challenged hiring practices**, and that there were suitable alternative selection procedures that would have had a lesser adverse impact."



$985k settlement + injunctive relief

Findings from the DOJ and EEOC regarding the challenges to hiring underrepresented groups in law enforcement

- Law enforcement agencies' reliance on inadequately tailored examinations as part of the screening process may have the unintended consequence of excluding qualified individuals in underrepresented communities from the applicant pool.

- Reliance on certain additional selection criteria and screening processes that disproportionately impact individuals from underrepresented communities can also inhibit agencies' efforts to increase the diversity of their workforces.

- Requirements, such as residency restrictions, may limit certain underrepresented communities' representation in law enforcement agencies.

- Length, complexity, and cost of application processes can serve as a deterrent for applicants.

- Law enforcement agencies may be limited in their ability to modify or adjust hiring and selection criteria.

Recommendations from the DOJ and EEOC about using the hiring process towards achieving legitimate diversity:

- Agencies are increasingly adopting a holistic view of what skills and strengths an applicant brings to a law enforcement agency, in part by being willing to reevaluate information revealed during background checks, including previous drug use.
- Law enforcement agencies have expressed a willingness to reconsider selection criteria and written or physical examinations that do not correspond to job-related duties and that disproportionately screen out individuals from underrepresented populations.
- In their efforts to diversify their workforces, law enforcement agencies have streamlined and made more transparent their hiring and selection procedures. Some agencies have offered assistance and preparation materials to help applicants prepare for examinations.
- Law enforcement agencies have involved community members in the hiring process as a way to develop workforces that reflects the diversity of their communities.

RETENTION

I. Climate survey
II. Organizational policies and practices



Picture credit: https://thepeoplegroup.com/2011/08/10-ways-to-create-a-toxic-workplace-with-high-turnover/

RETENTION

Why is focusing on RETENTION of a diverse workforce is important?

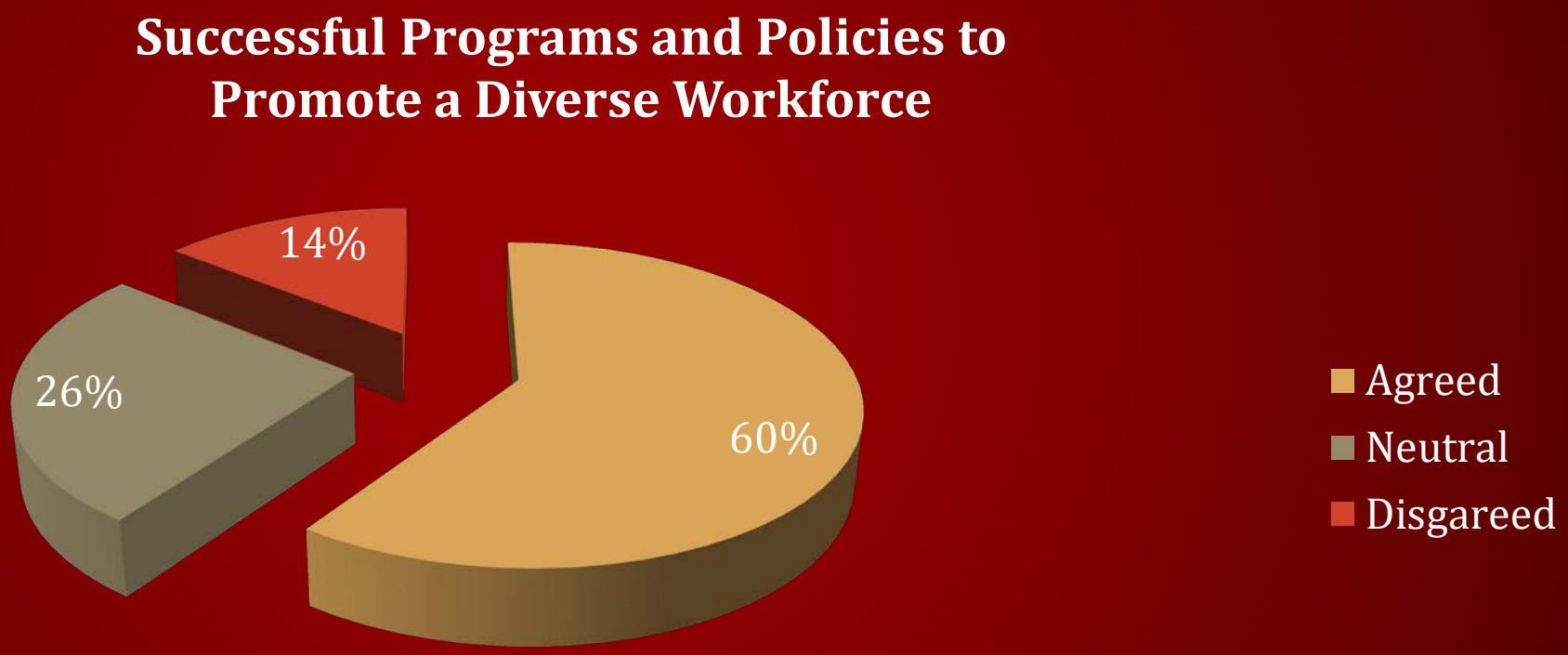
- It may play a role in successfully RECRUITING a diverse workforce.
- Your own employees are your best recruiters.

CLIMATE SURVEYS

- EEOC recommends that a self-assessment should include more than a review of workforce demographics[1].
  - Assess your employees' knowledge of your agency's
    - non-discrimination/non-harassment policies
    - Complaint filing process
    - Investigation process
    - Non-retaliation policies
- Use the survey to identify progress and track success.
- The survey may identify root causes for the lack of diversity for a particular group.

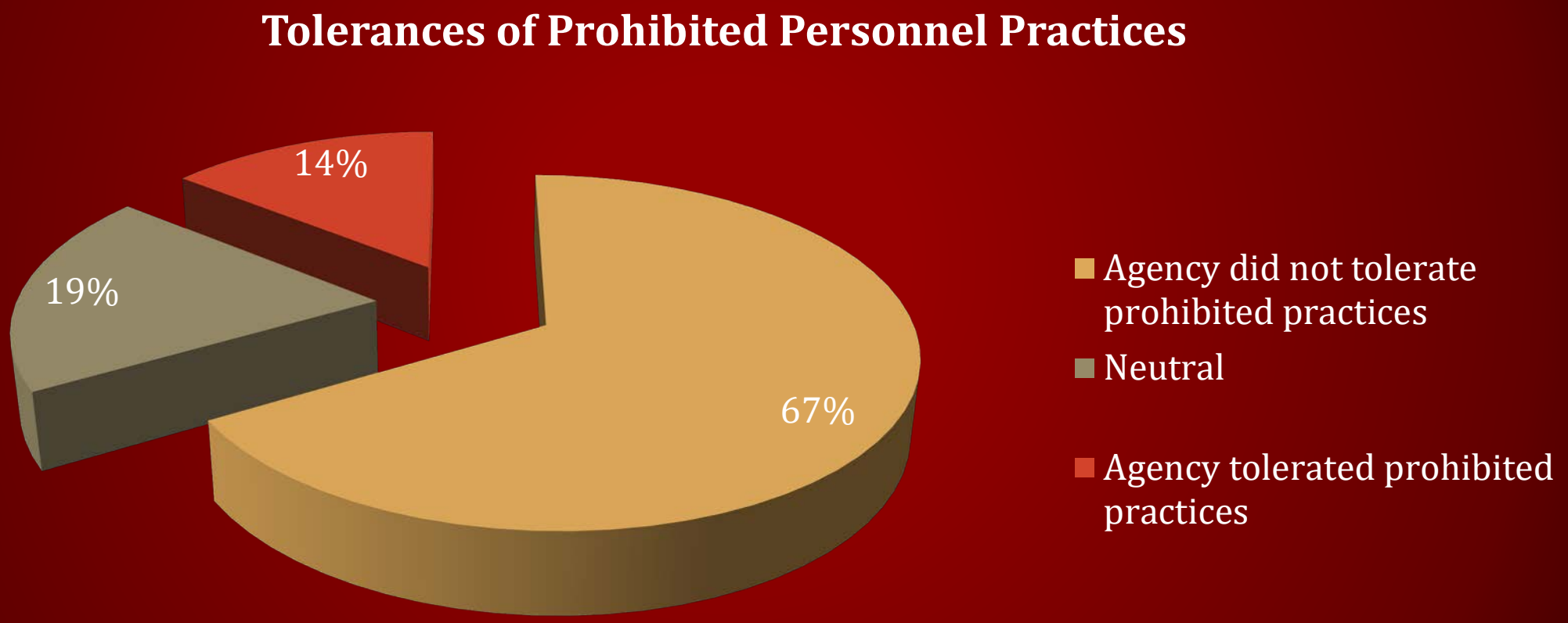
[1]https://www.eeoc.gov/federal/reports/pspe.cfm#_Toc514140276

CLIMATE SURVEYS (continued)



Office of Federal Operations Program Evaluation: Recruitment and Hiring Gender Disparities in Public Safety Occupations
https://www.eeoc.gov/federal/reports/pspe.cfm#_Toc514140258

CLIMATE SURVEYS (continued)



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ORGANIZATIONAL POLICIES AND PRACTICES



- Are your policies inclusive?
  - Protected classes are expanding
  - Work/life balance
- Are your policies consistent across your municipality?
  - City policy vs. Fire/Police Department internal policy
- Have you identified unofficial policies and practices?

QUESTIONS?